

1 DAVID M. GIVEN, ESQ.
(State Bar No. 142375)
2 MEAGAN MCKINLEY-BALL, ESQ.
(State Bar No. 245375)
3 PHILLIPS, ERLEWINE & GIVEN LLP
One Embarcadero Center, Suite 2350
San Francisco, CA 94111
Telephone: (415) 398-0900
Facsimile: (415) 398-0911

6 M. KELLY TILLERY, ESQ.
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
Telephone: (215) 981-4000
Facsimile: (215) 981-4750
Admitted Pro Hac Vice

10 *Attorneys for Plaintiff*

LAURA THOMPSON, ESQ.
(State Bar No. 219999)
2370 Market Street, Suite 318
San Francisco, CA 94114
Telephone: (415) 264-8423
Facsimile: (415) 558-9688

MATTHEW STA VISH, ESQ.
BERENATO, WHITE & STA VISH, LLC
6550 Rock Spring Drive, Suite 240
Bethesda, MD 20817
Telephone: (301) 896-0600
Facsimile: (301) 896-0607
Admitted Pro Hac Vice

6 *Attorneys for Defendants*

11 **IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION**

14 **PHASE FORWARD INCORPORATED, a) CASE NO. 05-4232 JF (HRL)**
15 **Delaware Corporation,)**
16 **Plaintiff,) The Honorable Jeremy Fogel**
17 **v.)**
18 **MARY NOEL ADAMS, individually and) **JOINT PROPOSAL OF TRIAL DATES;**
19 **d/b/a PHASE FORWARD, and PHASE) **REQUEST, STIPULATION,**
20 **FORWARD LLC, a California Limited) **DECLARATIONS AND [PROPOSED]-**
21 **Liability Company,) **ORDER RESCHEDULING TRIAL**
22 **Defendants.) **SETTING CONFERENCE****
23 **) Scheduled Trial Setting Conference Date:**
24 **) May 16, 2008**
25 **) Courtroom Three, 5th Floor**
26 **)**********

27 Plaintiff Phase Forward Incorporated (“PFI”) and Defendants Mary Noel Adams and
28 Phase Forward LLC (collectively, the “parties”), by and through their undersigned counsel and
pursuant to Local Rules 6-1(b) and 6-2, hereby: (1) jointly submit alternative proposed Trial
Dates for the Court’s consideration; and (2) stipulate and jointly request that the Court
reschedule the pending Trial Setting Conference to any date between May 22, 2008 and June 3,
2008, inclusive, or such other date as the Court may in its discretion determine.

BACKGROUND

On April 14, 2008, the Court approved the parties' stipulation of that same date and ordered, *inter alia*, that the parties propose alternative Trial dates for its consideration. See Order of April 14, 2008 (Dkt. No. 87). The Court also scheduled a Trial Setting Conference for May 16, 2008 at 10:30 a.m. See Clerk's Notice of April 15, 2008 (Dkt. No. 88).

JOINTLY PROPOSED TRIAL DATES

The parties jointly propose that Trial in this matter be held the week of September 15, 2008.

DECLARATION OF M. KELLY TILLERY.

I, M. Kelly Tillery, declare as follows:

1. I am an attorney duly admitted to practice law in the Commonwealth of Pennsylvania. I am also admitted *pro hac vice* to the U.S. District Court for the Northern District of California, Civil Case No. 05-4232 JF (HRL), and in such capacity I serve as PFI's lead counsel. I have personal knowledge of the facts set forth in this Declaration (unless otherwise indicated) and if called as a witness could and would so testify.

2. On April 15, 2008, the Clerk's office notified the parties that the Court has scheduled a Trial Setting Conference in this matter to be held on May 16, 2008 at 10:30 a.m. (PDT) in San Jose, California. The notice advised that the parties may appear telephonically.

3. From May 13, 2008 to May 21, 2008, I will be attending a legal conference in Berlin, Germany. My attendance will prevent me from attending the Trial Setting Conference in person. Further, it will be impracticable to attend the Trial Setting Conference telephonically, due to the nine-hour time difference between Berlin and San Jose. I am returning to Philadelphia, Pennsylvania on May 21, 2008 and will be available to participate telephonically beginning on May 22, 2008.

4. Defendants' counsel has been advised of these facts and has agreed to rescheduling of the Trial Setting Conference to any date between May 22, 2008 and June 3, 2008, inclusive.

5. There have been no previous time modifications to this pending Trial Setting Conference or any other such conference in this case.

6. I agree that the postponement and rescheduling of the Trial Setting Conference will only affect that conference itself, and will otherwise have no appreciable effect on the schedule of this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this Declaration was executed at Philadelphia, Pennsylvania on this 24th day of April, 2008.


M. Kelly Tillery

DECLARATION OF MATTHEW STA VISH

I, Matthew Stavish, declare as follows:

1. I am an attorney duly admitted to practice law in the State of Maryland. I am also admitted *pro hac vice* to the U.S. District Court for the Northern District of California, Civil Case No. 05-4232 JF (HRL), and in such capacity I serve as Defendants' lead counsel. I have personal knowledge of the facts set forth in this Declaration (unless otherwise indicated) and if called as a witness could and would so testify.

2. On April 24, 2008, counsel for PFI advised me that M. Kelly Tillery, lead counsel for PFI, will be attending a conference in Berlin, Germany from May 13, 2008 to May 21, 2008. Counsel advised that, based on the time-zone differences involved, it would be impracticable for Mr. Tillery to attend telephonically the Trial Setting Conference currently scheduled for May 16, 2008. Counsel advised that Mr. Tillery would be available to attend telephonically beginning on May 22, 2008.

3. As noted in my Declaration of April 9, 2008 (see Dkt. No. 86), I serve as lead counsel for plaintiff Rally Manufacturing, Inc. in the case of *Rally Manufacturing, Inc. v. Pylon*

Manufacturing Corp., Civ. Action No. 07-21150 Civ. King/Garber (“*Rally Manufacturing*”), an unrelated Federal patent action currently pending in the Southern District of Florida.

4. Trial in *Rally Manufacturing* is scheduled to begin at the beginning of June 2008 and will require my presence in Miami, Florida beginning June 4, 2008. Because of my obligation to devote substantial time to preparing for trial in *Rally Manufacturing*, I will be unable to participate telephonically in the Trial Setting Conference in this action unless such conference is scheduled to be held prior to June 4, 2008. I have advised PFI's counsel of these facts, and that I agree to rescheduling of the Trial Setting Conference to any date between May 22, 2008 and June 3, 2008, inclusive.

5. There have been no previous time modifications to this pending Trial Setting Conference or any other such conference in this case.

6. I agree that the postponement and rescheduling of the Trial Setting Conference will only affect that conference itself, and will otherwise have no appreciable effect on the schedule of this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this Declaration was executed at Bethesda, Maryland on this 24 day of April, 2008.

Matthew Stavish

STIPULATION

For the reasons set forth above, the parties stipulate to postponing the Trial Setting Conference for this case, currently scheduled for May 16, 2008 at 10:30 a.m. (PDT), and further jointly request, respectfully, that the Court reschedule the Trial Setting Conference to be held on any date between May 22, 2008 and June 3, 2008, inclusive, or such other date as the Court may in its discretion determine.

Respectfully submitted,

PEPPER HAMILTON LLP

Date: April 24, 2008

By:

M. Kelly Tillery, Esquire
Attorney for Plaintiff

ex rel.
Mr. Kelly
Tillen

BERENATO, WHITE & STAVISH, LLC

Date: April 24, 2008

By:

Matthew Stavish, Esquire
Attorney for Defendants

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED that the Trial Setting Conference in this case is rescheduled to be held on May 23, 2008 at 10:30 a.m.

DATED: 4/25/08

JEREMY FOGE
United States District Judge